

Eric H. Gibbs (State Bar No. 178658)
ehg@girardgibbs.com
Dylan Hughes (State Bar No. 209113)
Geoffrey A. Munroe (State Bar No. 228590)
GIRARD GIBBS LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Phone: (415) 981-4800
Facsimile: (415) 981-4846

George A. Hanson (*pro hac forthcoming*)
hanson@stuevesiegel.com
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Tel: 816-714-7100
Fax: 816-714-7101

Attorneys for Plaintiff Pati Johns

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PATI JOHNS, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

PANERA BREAD COMPANY, a Delaware corporation; and PANERA LLC, a Delaware limited liability company,

Defendants.

**COLLECTIVE AND CLASS
ACTION COMPLAINT**

**CLASS ACTION
DEMAND FOR JURY TRIAL**

INTRODUCTION

1
2 Plaintiff, Pati Johns, individually and on behalf of the Class defined herein, for her Complaint
3 against Panera Bread Company and Panera, LLC (collectively, "Panera" or "Defendants") hereby
4 states and alleges as follows:

5 1. The General Managers employed at Panera's bakery-cafes, despite what their title may
6 imply, uniformly spend the majority of their time on non-exempt floor duties, such as working the
7 cash register, preparing food, and sanitizing the cooking and dining areas. Panera improperly
8 classifies these employees as "exempt" employees, however, and fails to pay them overtime, in
9 violation of the Fair Labor Standards Act ("FLSA") and California state law. Plaintiff therefore
10 brings this lawsuit as a nationwide collective action under the FLSA and as a class action under
11 California law to recover unpaid wages owed to Plaintiff and all other similarly situated workers
12 employed in Panera's cafes in California.

JURISDICTION AND VENUE

13
14 2. The FLSA authorizes court actions by private parties to recover damages for violation
15 of the FLSA's wage and hour provisions. Jurisdiction over Plaintiff's FLSA claims is based upon 29
16 U.S.C. § 216(b) and 28 U.S.C. § 1331.

17 3. Under 28 U.S.C. § 1367, this Court has jurisdiction over Plaintiff's state law claims
18 because the state claims are so related to the FLSA claims that they form part of the same case or
19 controversy. Additionally, jurisdiction over Plaintiff's state law claims is based upon the Class
20 Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2)(A), because the parties are diverse and the
21 amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

22 4. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (c), because
23 Panera conducts business in this district.

INTRADISTRICT ASSIGNMENT

24
25 5. Assignment is proper to the San Francisco or Oakland divisions of this District under
26 Local Rule 3-2(c)-(d), as a substantial part of the events or omissions giving rise to Plaintiff's claims
27 occurred in Contra Costa County.
28

PARTIES

6. Plaintiff Pati Johns is a California citizen residing in Antioch, California. From March 2005 until January 12, 2008, Plaintiff was employed by Panera as a General Manager in their Antioch bakery-cafe. Plaintiff's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit A.

7. Defendant Panera Bread Company is a Delaware corporation with its principal place of business in Richmond Heights, Missouri. Panera Bread Company does business in the State of California and nationwide.

8. Defendant Panera LLC is a Delaware limited liability company wholly owned by Panera Bread Company. Its principal place of business is also in Richmond Heights, Missouri.

9. Panera Bread Company and Panera LLC are or were the joint employers of Plaintiff and the class of employees she seeks to represent. Panera LLC engaged, suffered, or permitted Plaintiff and Class members to work in the bakery-cafes owned by Panera Bread Company. Panera Bread Company, which posts openings and solicits applications for General Manager positions on the company's website, suffered or permitted Plaintiff and Class members to work in its bakery-cafes, and employs the human-resources or employee-services personnel who had responsibility for the terms and conditions of Plaintiff's and Class members' employment with Panera LLC, including Plaintiff's and Class members' exempt/non-exempt status.

GENERAL ALLEGATIONS

10. Panera owns and operates at least 493 bakery-cafes in 38 states across the nation, including in California, under the Panera Bread® and Saint Louis Bread Co.® names. With a mission statement of, "A loaf of bread in every arm®," Panera "understands that great bread makes great meals, from made-to-order sandwiches to tossed-to-order salads and soup served in bread bowls."

Panera's Misclassification of Its "General Managers"

11. Panera employs both "General Managers" and "Assistant Managers" in its bakery-cafes, who each perform both customer service and rudimentary administrative functions at the

1 bakery-cafes. The majority of both General Managers' and Assistant Managers' workday is spent on
2 non-exempt floor duties, such as working the cash register, preparing food, and sanitizing the cooking
3 and dining areas.

4 12. Both General Managers and Assistant Managers complete similar "shift routines"
5 (*i.e.*, Opening Manager Shift Routine, Mid Manager Shift Routine, Closing Manager Shift Routine).
6 Each shift routine requires that the majority of the employee's time be spent on regular, non-exempt
7 floor duties, such as working the cash register, preparing food, and sanitizing the cooking and dining
8 areas.

9 13. Both General Managers and Assistant Managers complete similar administrative tasks,
10 which are primarily clerical in nature and require a minority of their overall time. For example, both
11 General Managers and Assistant Managers take inventory, record leftovers, check email and voice
12 mail, fill in labor/sales tracking data, print employee labor summaries, correct time clock errors, and
13 deposit funds.

14 14. Panera classifies its Assistant Managers as "non-exempt" employees under the FLSA
15 and pays them overtime wages.

16 15. Panera misclassifies its General Managers as "exempt" employees under the FLSA,
17 however, and does *not* pay them overtime wages.

18 **Panera's Failure To Pay Regular and Overtime Wages**

19 16. General Managers are not allowed to accurately or independently record the time they
20 work for Panera. Instead, regardless of the hours worked, Panera's computer system automatically
21 logs 40 hours per week. For example, Plaintiff's paystubs falsely state that she worked 80 hours
22 every two week pay period. In reality, Plaintiff was expected to work, and did in fact work, more
23 than 40 hours per week. She was not paid for the time she worked beyond 40 hours each week.

24 17. In addition to store responsibilities that already exceed 40 hours per week, General
25 Managers are commonly required to attend training and sales meetings requiring travel, time outside
26 the cafe, and effort, all of which is unpaid.

1 18. The net effect of Panera's policy and practice, instituted and approved by Panera's
2 executives, is that Panera willfully fails to pay regular and overtime compensation to its General
3 Managers.

4 **Panera's Failure To Timely Pay All Wages Owed At Termination**

5 19. Panera also has a policy and practice of not paying its General Managers all the wages
6 due and owing to them upon termination. Aside from failing to pay the unrecorded regular and
7 overtime wages owing to its General Managers, Panera also does not pay its General Managers for all
8 accrued vacation time upon termination.

9 20. Plaintiff was terminated by Panera on January 12, 2008, after working for Panera since
10 March 2005. She was given a final pay check at the time of her termination, which pay check did not
11 include any unrecorded regular or overtime wages and did not include payment for vacation time she
12 had accrued.

13 **COLLECTIVE AND CLASS ALLEGATIONS**

14 21. Plaintiff brings Count I (the FLSA claim) as an "opt-in" collective action pursuant to
15 29 U.S.C. § 216(b).

16 22. Plaintiff brings Count II - V (the state law claims) as a class action pursuant to Fed. R.
17 Civ. P. 23, on behalf of herself and as the Class Representative of the following persons:

18 All current and former General Managers employed by Panera in the State
19 of California within the last four years.

20 23. The FLSA claim may be pursued by those who opt-in to this case, pursuant to 29
21 U.S.C. § 216(b).

22 24. The state law claims, if certified for class wide treatment, are brought on behalf of all
23 similarly-situated persons who do not opt-out of the class.

24 25. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief
25 on a collective basis challenging, among other FLSA violations, Panera's practice of failing to
26 accurately record all hours worked and failing to pay General Managers for all hours worked,
27 including overtime compensation. The number and identity of other plaintiffs yet to opt-in and
28

1 consent to be party plaintiffs may be determined from the records of Panera, and potential class
2 members may easily and quickly be notified of the pendency of this action.

3 26. Plaintiff's state law claims satisfy the numerosity, commonality, typicality, adequacy
4 and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

5 27. The class satisfies the numerosity standards. The class is believed to number in the
6 hundreds of persons. As a result, joinder of all class members in a single action is impracticable.
7 Class members may be informed of the pendency of this class action through direct mail.

8 28. There are questions of fact and law common to the class that predominate over any
9 questions affecting only individual members. The questions of law and fact common to the class
10 arising from Panera's actions include, without limitation, the following:

- 11 (i) Whether Panera misclassified its General Managers as exempt from
12 overtime requirements;
- 13 (ii) Whether Panera failed to keep accurate time records of General Managers;
- 14 (iii) Whether Panera failed to pay proper regular and overtime wages to
15 General Managers;
- 16 (iv) Whether Panera failed to provide meal and rest breaks to its General
17 Managers in accordance with California law;
- 18 (v) Whether Panera failed to pay all compensation due and owing General
19 Managers at termination of employment; and
- 20 (vi) Whether Panera's conduct was unfair or unlawful, in violation of the
21 California's Unfair Competition Law.

22 29. The questions set forth above predominate over any questions affecting only
23 individual persons, and a class action is superior with respect to considerations of consistency,
24 economy, efficiency, fairness, and equity to other available methods for the fair and efficient
25 adjudication of the state law claims.

26 30. Plaintiff's claims are typical of those of the class in that class members have been
27 employed in the same General Manager position as Plaintiff and were subject to the same unlawful
28 practices as Plaintiff.

33. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

**(Brought Against Panera by Plaintiff Individually and
on Behalf of All Others Similarly Situated)**

35. At all times material herein, Plaintiff has been entitled to the rights, protections, and s provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

COLLECTIVE AND CLASS ACTION COMPLAINT

1 37. Panera is subject to the overtime pay requirements of the FLSA because it is an
2 enterprise engaged in interstate commerce and its employees are engaged in commerce.

3 38. Panera violated the FLSA by misclassifying employees and failing to pay for
4 overtime. In the course of perpetrating these unlawful practices, Panera has also willfully failed to
5 keep accurate records of all hours worked by its employees.

6 39. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of
7 employees from overtime pay obligations. Though Panera classifies General Managers as exempt,
8 this is an incorrect application of the law. None of the FLSA exemptions apply to Plaintiff or other
9 similarly situated General Managers.

10 40. Plaintiff and all similarly situated employees are victims of a uniform and company-
11 wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all
12 General Managers in Panera's California locations and in 37 other states across the nation.

13 41. Plaintiff and all similarly situated employees are entitled to damages equal to the
14 mandated overtime premium pay within the three years preceding the filing of this Complaint, plus
15 periods of equitable tolling, because Panera acted willfully and knew or showed reckless disregard of
16 whether their conduct was prohibited by the FLSA.

17 42. Panera has acted neither in good faith nor with reasonable grounds to believe that its
18 actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiff and other
19 similarly situated employees are entitled to recover an award of liquidated damages in an amount
20 equal to the amount of unpaid overtime pay described pursuant to Section 16(b) of the FLSA,
21 codified at 29 U.S.C. § 216(b). Alternatively, should the Court find Panera did not act willfully in
22 failing to pay overtime pay, Plaintiff and all similarly situated employees are entitled to an award of
23 prejudgment interest at the applicable legal rate.

24 43. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions,
25 overtime compensation has been unlawfully withheld by Panera from Plaintiff and all similarly
26 situated employees. Accordingly, Panera is liable pursuant to 29 U.S.C. § 216(b), together with an
27
28

1 additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable
2 attorneys' fees, and costs of this action.

3 **COUNT II.**

4 **Failure to Pay Overtime Wages in Violation of California State Law**

5 **(Brought Against Panera by Plaintiff Individually and
6 on Behalf of All Others Similarly Situated)**

7 44. Plaintiff reasserts and re-alleges the allegations set forth above.

8 45. Throughout the liability period, IWC Wage Order No. 4 (8 C.C.R. § 11040) and
9 California Labor Code section 510 required the payment of overtime premium(s) for hours worked in
10 excess of eight in a given workday, forty in a given workweek, or on the seventh day worked in a
11 single workweek. This premium increases to double-time for all hours worked over twelve in a
12 single workday or eight on the seventh day worked in a single workweek.

13 46. Plaintiff and other similarly situated employees often worked in excess of the
14 maximum number of hours allowed by law without payment of the applicable overtime premiums.

15 47. Panera failed to pay Plaintiff and other similarly situated employees the overtime
16 required by California law.

17 48. Panera's failure to pay the correct amount of overtime violates IWC Wage Order No.
18 4 (8 C.C.R. § 11040) and California Labor Code §§ 510 and 1198.

19 49. Because Panera failed to pay overtime as required by law, Plaintiff Johns and other
20 similarly situated employees are entitled under California Labor Code §§ 218.5 and 218.6 and
21 1194(a) to recover the unpaid overtime balance, interest thereon, reasonable attorneys' fees, and costs
22 of suit.

23 **COUNT III.**

24 **Violation of the California Business and Professions Code §§ 17200, et seq.**

25 **(Brought Against Panera by Plaintiff Individually and
26 on Behalf of All Others Similarly Situated)**

27 50. Plaintiff reasserts and re-alleges the allegations set forth above.

28 51. Panera's actions, including but not limited to the failure to maintain accurate employee
time records, the failure to pay wages earned, and the failure to pay overtime compensation,

1 constitute unlawful conduct and violations of the FLSA. Such actions are also unfair business
2 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

3 52. Additionally, Panera's violation of California statutes related to the payment of
4 overtime wages and the payment of wages due and owing at the time of termination of employment,
5 also constitute unlawful business practices in violation of California Business and Professions Code
6 §§ 17200, *et seq.*

7 53. Upon information and belief, Panera continues its unlawful and unfair conduct as
8 previously described. As a result of said conduct, Panera has unlawfully and unfairly obtained
9 monies due to Plaintiff and is unfairly competing in the marketplace.

10 54. Plaintiff and other similarly situated employees are entitled to restitution of monies
11 due, as well as disgorgement of the ill-gotten gains obtained by Panera, for a period of four years
12 predating the filing of this Complaint.

13 55. As a direct and proximate result of Panera's conduct, Plaintiff is entitled to a
14 preliminary and permanent injunction enjoining Panera from continuing the unlawful and unfair
15 practices described above, and to such other equitable relief as is appropriate under California
16 Business and Professions Code § 17203, including restitution as well as specific relief to enforce the
17 penalty provisions of the California Labor Code and Fair Labor Standards Act pursuant to Business
18 and Professions Code § 17202.

19 56. Plaintiff is entitled to attorneys' fees and costs for promoting the interests of the
20 general public in causing Panera to cease its unlawful and unfair business practices, in an amount
21 according to proof, pursuant to California Code of Civil Procedure § 1021.5 and any other applicable
22 law.

23 **COUNT IV.**

24 **Failure to Pay All Compensation Due and Owing at Termination in**
25 **Violation of California State Law**

26 **(Brought Against Panera by Plaintiff Individually and**
27 **on Behalf of All Others Similarly Situated)**

28 57. Plaintiff reasserts and re-alleges the allegations set forth above.

1 58. California Labor Code § 201 requires an employer who discharges an employee to pay
2 compensation due and owing to said employee upon discharge.

3 59. California Labor Code § 202 requires an employer to promptly pay compensation due
4 and owing to a quitting employee within seventy-two hours of that employee's notice of resignation.

5 60. California Labor Code § 203 provides that, if an employer willfully fails to pay
6 compensation upon discharge or resignation, the wages of the employee shall continue for a period of
7 up to thirty days.

8 61. Panera has willfully failed to pay all compensation and wages due and owing to
9 Plaintiff and similarly situated employees who were terminated from their employment with Panera.
10 As a result, Panera is liable to Plaintiff and all similarly situated employees for wages in an amount to
11 be determined at trial. Plaintiff are also entitled to payment of their reasonable attorney's fees and
12 costs of suit incurred in recovering the additional pay pursuant to California Labor Code § 218.5, and
13 interest pursuant to California Labor Code § 218.6.

14 **COUNT V.**

15 **Failure to Provide Rest and Meal Periods in Violation of California State Law**

16 **(Brought Against Panera by Plaintiff Individually and
17 on Behalf of All Others Similarly Situated)**

18 62. Plaintiff reasserts and re-alleges the allegations set forth above.

19 63. Plaintiff and similarly situated employees regularly worked in excess of five hours per
20 day without being afforded at least one half-hour meal period in which she was relieved of all duty,
21 as required by California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4 (8 C.C.R. §
22 11040).

23 64. Plaintiff and similarly situated employees regularly worked in excess of ten hours per
24 day without being afforded two half-hour meal periods in which she was relieved of all duty, as
25 required by California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4 (8 C.C.R. §
26 11040).

27 65. Plaintiff and similarly situated employees worked in excess of four hours per day
28 without being afforded a ten-minute rest period.

68. For each time that Plaintiff and similarly situated employees were not provided the required rest and/or meal period, they are entitled to recover backpay wages in the amount of one additional hour of pay at the employee's regular rate of compensation pursuant to California Labor Code §§ 226.7 and IWC Wage Order No. 4 (8 C.C.R. § 11040).

PRAYER FOR RELIEF

1. An order certifying that Count I of the action may be maintained as a collective action pursuant to 29 U.S.C. § 216(b);

2. An order certifying that Counts II-V of the action may be maintained as a class action pursuant to Fed. R. Civ. P. 23.

3. Compensatory and statutory damages, penalties and restitution, as appropriate and available under each cause of action, in an amount to be proven at trial based on, among other things, the unpaid balance of compensation owed by Panera;

4. Exemplary and punitive damages, as appropriate and available under each cause of action, pursuant to California Civil Code § 3294:

1 5. An order enjoining Panera from pursuing the unlawful policies, acts and practices
2 complained of herein;

3 6. Attorneys' fees pursuant to, among other things, California Labor Code § 1194(a) and
4 pursuant to the Fair Labor Standards Act of 1938;

5 7. Costs of this suit;

6 8. Pre- and post-judgment interest; and

7 9. Such other and further relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby requests a trial by jury of all issues triable by jury.

10
11 DATED: February 22, 2008

Respectfully submitted,

12 **GIRARD GIBBS LLP**

13
14 By: 

Eric H. Gibbs

15
16 Dylan Hughes
Geoffrey A. Munroe
GIRARD GIBBS LLP
601 California Street, 14th Floor
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

17
18 George A. Hanson
(*pro hac forthcoming*)
STUEVE SIEGEL HANSON LLP
330 W. 47th Street, Suite 250
Kansas City, MO 64112
Telephone: (816) 714-7170
Facsimile: (816) 714-7101

19
20
21
22
23
24 *Attorneys For Plaintiff Pati Johns*

EXHIBIT A

Eric H. Gibbs (State Bar No. 178658)
ehg@girardgibbs.com
Dylan Hughes (State Bar No. 209113)
Geoffrey A. Munroe (State Bar No. 228590)
GIRARD GIBBS LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Phone: (415) 981-4800
Facsimile: (415) 981-4846

George A. Hanson (*pro hac forthcoming*)
hanson@stuevesiegel.com
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Tel: 816-714-7100
Fax: 816-714-7101

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PATI JOHNS, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

PANERA BREAD COMPANY, a Delaware
corporation; and PANERA LLC, a Delaware limited
liability company,

Defendants.

Case No. _____

**CONSENT TO BECOME A
PARTY PLAINTIFF**

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

I hereby consent to be a party plaintiff in the foregoing action. For purposes of this
lawsuit, I choose to be represented by Girard Gibbs LLP and Stueve Siegel Hanson LLP, and
other attorneys with whom they may associate.

DATED: February 20, 2008


Pati Johns

CONSENT TO BECOME A PARTY PLAINTIFF